



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

October 16, 2003

MidAmerican Energy Corporation
Attn. Steven Geyer
666 Grand Avenue
Des Moines, IA 50309

40312978



Superfund

RE: Potential Responsibility Party Investigation
Former Manufactured Gas Plant, 7th Street between 10th and 11th Ave., Council Bluffs, IA

Dear Mr. Geyer:

This letter is to inform MidAmerican Energy Corporation (MEC) that the Department is conducting an investigation into the history of ownership and operation of a former manufactured gas plant (MGP) site in Council Bluffs located on 7th Street between 10th and 11th Ave. This letter requests that MEC respond to some factual and legal issues regarding the potential affiliation MEC may have to former owners and operators of this site. The Department is also requesting other records or information MEC may have to assist the Department in clarifying the ownership and operational history. I am attaching some site maps and a staff memo describing prior assessment which has been done and some discussion of what further remedial action the Department believes needs to be done.

The Department recently met with attorneys representing several potentially responsible parties (PRPs): TXU, Inc., Omaha Public Power District (OPPD), Iowa Department of Transportation (IDOT) and Aquila, Inc. In discussing the factual and legal basis for OPPD's potential liability, its attorney, Stephen Bruckner, suggested there may be some basis to implicate MEC as a successor to Iowa Power & Light Company. The parties agreed MEC should be notified of the research and facts available to date and given the opportunity to respond.

I will attempt to briefly summarize the facts and legal analysis that has raised some questions as to MEC's potential liability. Aquila, Inc., formerly Utilicorp United, Inc., acquired most of the property associated with this MGP in 1986 and continues to own it. Aquila acquired the property through what its attorney characterizes as an asset purchase from Peoples Natural Gas, a division of HNG/Internorth (which later became Enron). At this point Aquila's liability derives from its status as a current property owner under both CERCLA and state law.

Information to date generally indicates that a manufactured gas plant at this location operated from about 1899 to about 1932. There is also information from Council Bluffs news accounts that indicate the facility may have manufactured and stored gas up until the early 1950s on a standby basis to meet peak demand.

Jane Schilmoeller, attorney for Aquila, Inc., conducted research into the ownership and operation of the MGP and discovered a rather complex history of subsequent corporate affiliations with

owners and operators. She submitted the results of her research in a letter dated July 15, 2002 along with supporting documentation, which consists mostly of secondary sources such as Moody's. I am attaching the July 15, 2002 letter and a follow-up letter dated February 25, 2003. I am also attaching two flow charts Ms. Schilmoeller recently prepared which are helpful in tracking the corporate affiliations associated with the former owners and operators.

The Department notified two corporations, TXU, Inc. and Omaha Public Power District (OPPD) that they may be considered potentially responsible parties based on their arguable successorship to former owners and operators. (letter enclosed) The Iowa Department of Transportation has also been notified of potential responsibility since it acquired a small portion of the site in the 1970s as an easement to build an overhead highway. TXU, Inc.'s successorship derives from its affiliation with Lone Star Gas Company which acquired the stock of Council Bluffs Gas Company. Council Bluffs Gas Company owned the MGP from 1928 until 1960. As stated earlier, it appears the facility mainly operated as a MGP until about 1932. TXU, Inc. represented by attorney Richard Adams, stated it is prepared to participate in allocation negotiations.

Aquila's research presented facts to show that a company called Nebraska Power Company may be a successor to Citizen's Gas & Electric Company of Council Bluffs (Citizen's Gas) through a series of parent/subsidiary and merger relationships. Assuming this is accurate and assuming the law might place liability on Nebraska Power Company, the issue then becomes whether OPPD may have some liability as a successor to Nebraska Power Company.

Attorney Bruckner submitted a letter dated May 15, 2003 with supporting documentation which I am attaching for your reference. Mr. Bruckner's letter speaks for itself, but I would like to attempt to summarize the argument. He argues that (1) there is an insufficient factual and legal basis to find that Nebraska Power Company has any derivative liability from former owners and operators; and (2) assuming there is, OPPD is not a successor to any of the liabilities associated with any former Iowa properties previously held by Nebraska Power Company or its predecessors.

Mr. Bruckner's research convinces him that a Nebraska statute authorizing the creation of OPPD as a public utility also prohibited it from owning any out of state assets and associated liabilities. (we have not yet researched the statutory language and intent or any caselaw interpreting it) A mechanism was established in order to effectuate OPPD's acquisition of Nebraska Power Company without acquiring any out of state property and assets. Mr. Bruckner's letter describes a mechanism in which Nebraska Power Company stock was transferred to what has been referred to as an "organizing company", Omaha Electric Committee, Inc., a Nebraska non-profit corporation. A process was then undertaken to essentially value the real property and "certain other assets and cash" associated with then existing Iowa properties and assign a proportion of Nebraska Power Company stock to that valuation. The result is that OPPD acquired about 93% of Nebraska Power Company stock from Omaha Electric Committee, Inc. Omaha Electric Committee then transferred the remaining 7% of Nebraska Power Company stock to an Iowa company it created and for which it held all issued stock, Western Iowa Power Company. Western Iowa Power Company stock was then sold to Iowa Power & Light Company in 1949.

Iowa Power & Light Company through a series of mergers became part of MEC. OPPD argues it could not have acquired any liabilities associated with the Iowa MGP and which were held by

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Nebraska Power Company since it did not acquire any stock of Nebraska Power Company anyway connected with Iowa properties and "assets". This conclusion is the point of contention.

One essential point that it not emphasized in Mr. Bruckner's May 15, 2003 letter is that at the time of the spin off in 1946-49, Nebraska Power Company did not own the MGP property nor has Nebraska Power Company ever owned the Iowa MGP property. Mr. Bruckner argues this is immaterial since the stock transfer to OPPD must be interpreted broadly to have removed any ownership interest with Iowa properties including liabilities of predecessor companies who did own and operate the Iowa MGP. Aquila argues that it appears the stock valuation and spin off was only intended to value existing properties and certain other assets in Iowa at the time of the transfer; and in fact, OPPD acquired 93% stock ownership of Nebraska Power Company which may be sufficient for them to succeed to derivative liabilities wherever they may have originated.

Aquila makes the point that these potential liabilities did not just disappear when Nebraska Power Company was acquired which raises the issue of whether the Iowa Power & Light Company acquired those liabilities when it acquired 7% of Nebraska Power Company stock which in some sense represented the value of then existing Iowa properties and "assets" held by Nebraska Power Company.

Obviously, more factual and legal research needs to be done to better understand the potential for liability, including review of the transactional documents and the language and intent of the Nebraska statute. However, all parties are very interested in getting MEC's view of its own potential liability and its interpretation of the facts and law surrounding OPPD's potential liability. It is expected that MEC may have records that shed more light on the Nebraska Power Company/ OPPD/Iowa Power & Light transaction.

I encourage MEC to communicate with Jane Schilmoeller and Stephen Bruckner. The Department would request MEC provide its response by November 21, 2003. All parties anticipate having a meeting to discuss further this issue and the possibilities of reaching some kind of allocation agreement.

I will be out of the office until October 30, 2003 but Mick Leat, 281-8045, should be available to provide access to Department records. Thank you for your cooperation.

Sincerely,



David L. Wornson

Attorney, Iowa Department of Natural Resources

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Enclosures: